

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JERALD GARRETT,

Plaintiff

v.

DR. YEE, *et al.*,

Defendants

Case No. 2:22-cv-01189-CDS-NJK

ORDER

Pro se Plaintiff Jerald Garrett brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at Southern Desert Correctional Center. ECF No. 6. On September 2, 2022, this Court gave Plaintiff thirty days to file an amended complaint. ECF No. 5 at 10. The Court warned Plaintiff that the action could be dismissed without prejudice if he failed to file an amended complaint by that deadline. *Id.* The deadline expired, and Plaintiff did not file an amended complaint, move for an extension, or otherwise respond.

I. DISCUSSION

District courts have the inherent power to control their dockets, and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. *See Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives. *See In re Phenylpropanolamine Prod. Liab.*

1 *Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th
2 Cir. 1987)).

3 The first two factors, the public's interest in expeditiously resolving this litigation and
4 the Court's interest in managing its docket, weigh in favor of dismissal of Plaintiff's claims. The
5 third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a
6 presumption of injury arises from the occurrence of unreasonable delay in filing a pleading
7 ordered by the court or prosecuting an action. See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir.
8 1976). The fourth factor—the public policy favoring disposition of cases on their merits—is
9 greatly outweighed by the factors favoring dismissal.

10 The fifth factor requires the Court to consider whether less drastic alternatives can be
11 used to correct the party's failure that brought about the Court's need to consider dismissal. See
12 *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic
13 alternatives *before* the party has disobeyed a court order does not satisfy this factor); *accord*
14 *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the persuasive
15 force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of less drastic alternatives
16 prior to disobedience of the court's order as satisfying this element[,]” *i.e.*, like the “initial
17 granting of leave to amend coupled with the warning of dismissal for failure to comply[,]” have
18 been “eroded” by *Yourish*). Courts “need not exhaust every sanction short of dismissal before
19 finally dismissing a case, but must explore possible and meaningful alternatives.” *Henderson v.*
20 *Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until
21 and unless Plaintiff files an amended complaint, the only alternative is to enter a second order
22 setting another deadline. But the reality of repeating an ignored order is that it often only delays
23 the inevitable and squanders the Court's finite resources. The circumstances here do not
24 indicate that this case will be an exception: there is no hint that Plaintiff needs additional time
25 or evidence that he did not receive the Court's September 2, 2022, order. Setting another
26 deadline is not a meaningful alternative given these circumstances. Thus, the fifth factor favors
27 dismissal.
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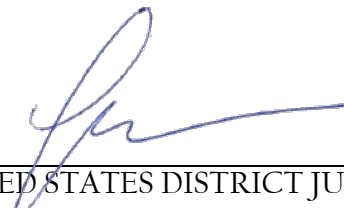
1 II. CONCLUSION

2 Having thoroughly considered these dismissal factors, the Court finds that they weigh in
3 favor of dismissal. It is therefore ordered that this action is dismissed without prejudice based
4 on Plaintiff's failure to file an amended complaint in compliance with this Court's September 2,
5 2022, order. The Clerk of Court is directed to enter judgment accordingly and close this case. No
6 other documents may be filed in this now-closed case. If Plaintiff wishes to pursue his claims, he
7 must file a complaint in a new case.

8 It is further ordered that the application to proceed *in forma pauperis* without having to
9 prepay the filing fee (ECF Nos. 1, 4) is **GRANTED**. Plaintiff need not pay an initial installment
10 fee, prepay fees or costs, or provide security for fees or costs, but he is still required to pay the
11 full \$350 filing fee under 28 U.S.C. § 1915, as amended. This full filing fee remains due and owing
12 even though this case is being dismissed.

13 In order to ensure that Plaintiff pays that filing fee, it is further ordered that the Nevada
14 Department of Corrections must forward payments from the account of Jerald Garrett, #88447
15 to the Clerk of the United States District Court, District of Nevada, 20% of the preceding
16 month's deposits (in months that the account exceeds \$10.00) until the full \$350 filing fee has
17 been paid for this action. The Clerk is directed to SEND copies of this order to the Finance
18 Division of the Clerk's Office and to the attention of **Chief of Inmate Services for the Nevada**
19 **Department of Corrections**, P.O. Box 7011, Carson City, NV 89702.

20 DATED: October 11, 2022

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23 UNITED STATES DISTRICT JUDGE
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